

Notice of Proposed Regulatory Action
The State Board of Equalization Proposes to Adopt
Amendments to California Code of Regulations, Title 18,
Section 313, *Hearing Procedure*, and
Section 321, *Burden of Proof*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to adopt amendments to California Code of Regulations, title 18, sections (Property Tax Rules) 313, *Hearing Procedure*, and 321, *Burden of Proof*. Property Tax Rule 313 prescribes the procedures that county boards of equalization (county boards) must follow when conducting hearings on property tax applications. Property Tax Rule 321 prescribes the burden of proof in county boards' hearings regarding property tax applications. The proposed amendments clarify and make both Property Tax Rules 313 and 321 consistent with Assembly Bill No. (AB) 711 (Stats. 2011, ch. 220), which defined the term "owner-occupied single-family dwelling" for purposes of the rebuttable presumption regarding the burden of proof in hearings on specified property tax applications provided by Revenue and Taxation Code (RTC) section 167.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on August 21-23, 2012. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on August 21, 22, or 23, 2012. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Property Tax Rules 313 and 321.

AUTHORITY

Government Code section 15606.

REFERENCE

RTC sections 167, 205.5, and 218.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior Law

RTC section 167, subdivision (a), establishes a rebuttable presumption regarding the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings. RTC section 167, subdivision (a) provides that "Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment."

Property Tax Rule 313 prescribes the procedures county boards must follow when conducting hearings on property tax applications. Property Tax Rule 313, subdivision (c)(2), incorporates the rebuttable presumption in RTC section 167 and provides, in relevant part, that "The board shall not require the applicant to present evidence first when the hearing involves: . . . (2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. In those instances, the chair shall require the assessor to present his or her case to the board first."

In addition, Property Tax Rule 321 prescribes the burden of proof in county boards' hearings regarding property tax applications. Property Tax Rule 321, subdivision (d), also incorporates the rebuttable presumption in RTC section 167 and provides that "in any hearing involving the assessment of an owner-occupied single-family dwelling . . . the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment."

Amendments Made by AB 711

AB 711 added subdivision (c) to RTC section 167 to define the term "owner-occupied single-family dwelling" as used in the rebuttable presumption. New subdivision (c) provides that:

For the purposes of this section, an owner-occupied single-family dwelling means a single-family dwelling that satisfies both of the following:

- (1) The dwelling is the owner's principal place of residence.
- (2) The dwelling qualifies for a homeowners' property tax exemption.

Effect, Objectives, and Benefits of the Proposed Amendments

Board staff initiated a project the objective of which was to recommend language that could be added to Property Tax Rules 313 and 321 to incorporate the definition of owner-

occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711, and thereby make the rules consistent with the new subdivision. As a result, Board staff issued Letter to Assessors No. (LTA) 2012/007 on January 30, 2012, which recommended amending Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to add the following sentence, and solicited comments regarding the recommendation from county assessors, county boards, and other interested parties:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption.

Board staff received one comment in response to LTA 2012/007. The comment explained that real property that is the owner's principal residence and qualifies for the \$100,000 disabled veterans' exemption provided by RTC section 205.5 also qualifies for the \$7,000 homeowners' property tax exemption provided by RTC section 218, even though taxpayers that are eligible for both exemptions choose to claim the larger disabled veterans' exemption, and that such property is therefore subject to the rebuttable presumption in RTC section 167, subdivision (a). The comment also recommended adding a sentence to the proposed amendments to both Property Tax Rules 313 and 321 to clarify that property that qualifies for a homeowners' property tax exemption includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

Board staff agreed with the above comment because RTC section 218, subdivision (b)(1), expressly provides that the homeowners' property tax exemption does not "apply to property on which the owner receives the veterans' exemption" specified by RTC section 205, but RTC section 218 does not contain similar language providing that property on which the owner receives the disabled veterans' exemption provided by RTC section 205.5 cannot qualify for the homeowners' property tax exemption. Subsequently, Board staff prepared Formal Issue Paper 12-004 and submitted it to the Board for consideration at its May 30, 2012, Property Tax Committee meeting. The issue paper recommended that the Board add references to RTC sections 205.5 and 218, which respectively prescribe the disabled veterans exemption and homeowners' property tax exemption, to the reference notes to Property Tax Rules 313 and 321, and add the following two sentences to Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to incorporate and clarify the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5.

During its May 30, 2012, Property Tax Committee meeting, the Board determined that staff's recommended amendments are reasonably necessary to accomplish the objectives of making Property Tax Rules 313 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and further clarifying the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board unanimously voted to propose the adoption of the recommended amendments.

The proposed amendments are anticipated to provide the following specific benefits:

- Make Property Tax Rules 312 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711; and
- Clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rules 313 and 321 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Property Tax Rules 313 and 321 are the only existing state regulations prescribing the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings. In addition, there is no federal property tax and there are no comparable federal regulations or statutes to Property Tax Rules 313 and 321.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Property Tax Rules 313 and 321 will not change the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings, as prescribed by RTC section 167. The adoption of the proposed amendments to Property Tax Rules 313 and 321 will only make the rules consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Property Tax Rules 313 and 321 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Property Tax Rules 313 and 321 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on August 21, 2012, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rules 313 and 321 during the August 21-23, 2012, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Property Tax Rules 313 and 321. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Property Tax Rules 313 and 321 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments, which includes the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Property Tax Rules 313 and 321 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently

related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Property Tax Rules 313 and 321, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.